

**Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 110—Sales/Use Tax—Exemptions**

EMERGENCY RULE

12 CSR 10-110.601 Electrical, Other Energy and Water as Defined in Section 144.054, RSMo.

PURPOSE: Section 144.054.2, RSMo, exempts from state sales and use tax and local use tax, but not local sales tax, electricity, gas, whether natural, artificial, or propane, water, coal, and energy sources used or consumed in manufacturing, processing, compounding mining or producing any product or used in research and development related to manufacturing, processing, compounding, mining or producing any product or in the processing of recovered materials. This rule explains when this exemption applies and how a taxpayer may claim the exemption at the time of purchase of the utilities, energy and water.

*EMERGENCY STATEMENT: The director finds that there is an immediate danger to the public welfare, which can only be addressed through this emergency rule. This emergency rule is necessary to ensure public awareness and to preserve a compelling governmental interest requiring an early effective date in that the emergency rule informs the public of new sales tax exemptions that are available to various sellers and their customers as a result of enactment of TAFP CCS HCS Senate Bill 30 by the 94th Missouri General Assembly. These exemptions are effective August 28, 2007, and taxpayers need guidance regarding how these statutory changes impact them. A proposed rule, which covers the same material, is published in this issue of the **Missouri Register**. The scope of this emergency rule is limited to the circumstances creating the emergency and complies with the protections extended in the **Missouri** and **United States Constitutions**. The director believes this emergency rule is fair to all interested persons and parties under the circumstances. This emergency rule filed Aug. ____, 2007, effective Aug. 28, 2007, expires Feb. 23, 2008.*

(1) In general, electricity, gas, whether natural, artificial, or propane, water, coal, and energy sources used or consumed in manufacturing, processing, compounding, mining or producing any product, or used or consumed in the processing of recovered materials, or used in research and development related to manufacturing, processing, compounding, mining or producing any product is exempt from state sales and use tax and local use tax, but not local sales tax.

(2) Definition of Terms.

(A) Compounding—Producing a product by combining two (2) or more ingredients or parts.

(B) Energy Source – Those resources, such as petroleum, coal, gas, wind, steam, nuclear fuel and sunlight, from which energy is produced.

- (C) Fabrication—See 12 CSR 10-111.010.
- (D) Manufacturing—See 12 CSR 10-111.010.
- (E) Material Recovery Processing Plant—See 12 CSR 10-111.060
- (F) Mining—See 12 CSR 10-111.010.
- (G) Producing—See 12 CSR 10-111.010.
- (H) Recovered materials— See 12 CSR 10-111.060.

(3) Basic Application of Exemption.

(A) A taxpayer may claim the exemption for state sales and use tax and local use tax, but not local sales tax at the time of purchase. A taxpayer may not claim an exemption from local tax and then remit the tax directly to the department. It is the seller's responsibility to collect and remit the proper amount of local tax to the department.

(B) For purchases which are reported to the department under Direct Pay and EEDP are exempt from the application of section 3(A) of this rule.

(C) The electricity, other energy, and water source that is subject to this exemption is not required to be directly used in the process for which the exemption is being claimed. There is also no requirement that the electricity comprise 10% of the cost of a primary or secondary production process in order to qualify for this exemption. There is also no requirement that 25% of the raw materials are recycled in order for the purchaser to claim this exemption.

(4) Method of Collection and Apportionment

(A) Energy and water vendors are responsible for remitting tax to the department. Purchasers are responsible to inform energy vendors on the MO-149 (Sales/Use Tax Exemption Certificate) of the percentage of energy used for activities exempt under Section 144.054, RSMo. The purchaser may use any reasonable method to calculate this percentage, such as square footage or reference to a use analysis.

The exemption will be applied as follows:

<u>Purchaser's Calculated Exempt Percentage</u>	<u>Percentage Exempt</u>
76-100	100
51-75	75
26-50	50
1-25	25
0	0

(B) Beginning on August 28, 2007 and ending on October 28, 2007 any vendor who receives an exemption certificate exempting sales of electricity, gas, whether natural, artificial, or propane, water, coal, and energy sources used or consumed in manufacturing, processing, compounding, mining or producing any product, or used or consumed in the processing of recovered materials, or used in research and

development related to manufacturing, processing, compounding, mining or producing any product after the bill was issued may take the correction as an adjustment on their sales tax return provided the net result is not a negative figure. In the event an exemption certificate is received after October 28, 2007 and an exemption was due and not properly applied by the vendor, the vendor may submit a refund request to the department.

(5) Exempt Examples.

(A) A manufacturer purchases propane to operate forklifts that move raw materials between production lines. The fuel is exempt from state sales and use tax and local use tax, but not local sales tax.

(B) A manufacturer uses electricity to run its equipment, maintain a moderate temperature in its production facility and to light the plant. The purchase of all of its electricity is exempt from state sales and use tax and local use tax, but not local sales tax because it is used or consumed in producing a product.

(C) A manufacturer uses coal to fuel boilers to generate steam used to manufacture a product. The purchase of the coal is exempt from state sales and use tax and local use tax, but not local sales tax because it is used or consumed in producing a product.

(D) A manufacturer purchases compressed gas used for welding a product. The purchase of the compressed gas is exempt from state sales and use tax and local use tax, but not local sales tax because it is used or consumed in producing a product.

(E) A manufacturer uses water to cool a product during the manufacturing process. The water is exempt from state sales and use tax and local use tax, but not local sales tax.

(F) A manufacturer preserves its final product in a warehouse located at the production facility awaiting shipment. The purchase of energy to maintain the desired temperature and provide lighting is exempt from state sales and use tax and local use tax, but not local sales tax.

(G) A construction company, who has been deemed a manufacturer, purchases fuel to be used in a concrete ready-mix truck. The fuel is subject to motor fuel tax, however if a refund claim is made, the refund will be exempt from state sales tax, but not local sales tax, because it is used in producing a product.

(6) Taxable Examples.

(A) A restaurant preparing food for immediate consumption is not exempt as a manufacturer. Therefore, all state and local taxes apply.

*AUTHORITY: section 144.270, RSMo 2000 and TAFP CCS HCS SB 30, enacted by the 94th General Assembly, 2007. Emergency rule filed Aug. ____, 2007, effective Aug. 28, 2007, expires Feb. 23, 2008. A proposed rule, which covers the same material, is published in this issue of the **Missouri Register**.*